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IN THE

Supreme Court of the United States

October Term, 1960

No. 519

DAVID L. RATKE and MONROE CAINE,
Petitioners,

vs.

HONORABLE FRANK A. PICARD, UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on October 7, 1960 and October 10, 1960, denying petitioners' petition for a writ of mandamus to Honorable Frank A. Picard, the United States District Judge for the Eastern District of Michigan, to direct the transfer of trial of an indictment against petitioners and two others as defendants from the Eastern District of Michigan to the Southern District of New York.

Citations to Opinions Below

The opinion of the District Court, denying the motion of the petitioners and two others as defendants for a transfer of trial pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure, is printed in Appendix A, *infra*, page 15, and is not yet officially reported. The Court of Appeals denied petitioners' petition for a writ of mandamus to direct the transfer of the action in an opinion printed in Appendix A, *infra*, page 21. The opinion of the Court of Appeals on petitioners' motion for reconsideration is printed in Appendix A, *infra*, page 22. Both opinions of the Court of Appeals are not yet officially reported.

Jurisdiction

The orders of the Court of Appeals were made on October 7 and October 10, 1960 (Appendix A, *infra*, pages 21 and 22). The trial proceedings in the Eastern District of Michigan were stayed by the Court of Appeals pending the filing of the instant writ of certiorari. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented

Whether the District Court improperly exercised its discretion in refusing to remove the trial of a criminal action so as to deprive the defendants of their constitutional rights under the Sixth Amendment.

Statutes Involved

The statutory provisions involved are: Rule 21(b) of the Federal Rules of Criminal Procedure; 18 U. S. C.

3237(a); 18 U. S. C. 1341; Constitution of the United States, Art. III, Sec. 2, cl. 3; Sixth Amendment. They are printed in Appendix B, *infra*, pages 23-25.

Statement

The petitioners herein and two others as defendants were indicted in eleven counts in the Eastern District of Michigan, charging a violation of Section 1341 and Section 2, Title 18, United States Code, of using the mails to defraud. The indictment is printed in Appendix C, *infra*, pages 26-39. Each of the counts in substantially the identical language charges the defendants with having devised a scheme and artifice to defraud by means of alleged false representations contained in newspaper advertisements for the sale of an automotive product, and that for the purpose of executing the aforesaid scheme and artifice "caused to be placed in an authorized depository for mail matter" registered articles addressed to various addressees in New York "to be sent or delivered by the post office establishment of the United States". The Government's bill of particulars states that:

> "the scheme and artifice to defraud was devised in various places, among which is New York, New Jersey and Michigan."

The pertinent portion of the Government's bill of particulars (submitted in letter form) is printed in Appendix C, *infra*, page 39.

The prosecution against the defendants was first tried in Detroit on May 23, 1960 after the defendants' prior motions for change of venue to New York had been denied by the District Court without opinion. On June 1, 1960, Mr. Justice Frank A. Picard granted a mistrial and

scheduled a second trial for October 17, 1960. On September 19, 1960, the four defendants once again moved for an order transferring the venue of this action to the Southern District of New York pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure. The motion was denied by Judge Picard by memorandum and order dated September 21, 1960, printed in Appendix A, *infra*, pages 15-19. The Judge's memorandum was premised upon the ground that the indictment and bill of particulars did not charge a crime in the Southern District of New York and that the interest of justice and balance of convenience in effectuating a transfer did not favor the defendants.

On September 21, 1960, the defendants Ratke and Cayne, as petitioners, filed a petition for a writ of mandamus in the Court of Appeals to review the District Court's decision and to direct the Honorable District Judge to vacate his order denying the defendants' motion for a change of venue. The petition for writ of mandamus was denied on October 7, 1960 in an opinion printed in Appendix A, *infra*, page 21. The petitioners thereafter filed a motion for reconsideration of said denial of the mandamus petition and on October 10, 1960 the Court of Appeals denied the motion for reconsideration in an opinion printed in Appendix A, *infra*, page 22.

The Court of Appeals upheld the ruling of the District Court and stated that it did not consider this an extraordinary case or that the District Court had abused its discretion. The sole issue presented, therefore, is whether the District Court improperly exercised its discretion in ruling that the interest of justice favored a trial in Mexico

Reasons for Granting Writ

This case involves important constitutional questions affecting the fair administration of criminal justice. It involves a ruling by the District Court wherein principles were applied which are contrary to those laid down by this Court for application to the question of venue determination. Moreover, this case involves the realistic and practical ability of an accused in a criminal action to defend himself and to marshal his witnesses in presenting his defense. Factors of cost, convenience of witnesses and residence of defendants are all important and real factors in the ability of an accused to defend himself. As will hereinafter be set forth, each of these factors was either ignored or given insufficient weight by the District Court in determining the defendants' motion to transfer the trial of this action to the Southern District of New York.

The District Court for the second time has compelled the petitioners and two others, as defendants, to stand trial in Detroit on alleged mail fraud charges cognizable in the Southern District of New York where the defendants reside, maintain their places of employment, where all of their witnesses reside and where most of the Government's witnesses reside. It is respectfully submitted that, under the compelling facts and circumstances involved herein, the court below erred in refusing to transfer the trial of this action to the Southern District of New York.

Under Rule 21 (b) of the Federal Rules of Criminal Procedure, the District Court has power to transfer proceedings to another district if it appears from the indictment or from the bill of particulars that the offense was committed [illegible] of the Court [illegible] such a transfer. The [illegible]